



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	03/28/01	Bill No:	SB 1161
Subject:	Civil Service Exams	Author:	Polanco, et al.
Board Position:		Related Bills:	SB 1045 (Polanco) SB 44 (1999-2000)

BILL SUMMARY

This bill would establish a state policy that examination and employment information be broadly disseminated to all sectors of California's workforce and would require the State Personnel Board to develop a system to require state agencies, including the Board of Equalization, to disseminate state recruitment, examination, and employment information in accordance with that policy. This bill would impose additional duties in keeping with that policy.

ANALYSIS

Current Law

The State Civil Service Act (commencing with Government Code Section 18570) requires that eligible lists be established as a result of free competitive examinations open to all persons, as specified in Section 18900. Section 18930 of the Act requires that examinations to establish eligible lists be competitive, and fairly test and determine the qualifications, fitness, and ability of competitors to perform the duties of the class. Section 19790 provides that each agency is responsible for establishing an effective affirmative action program, under the coordination and monitoring of the State Personnel Board (SPB). That section also requires each agency to annually establish goals and timetables that are designed to overcome any identified underutilization of minorities and women in the agency. Section 19792 imposes various duties upon the SPB, such as the development, implementation, and maintenance of affirmative action and equal employment opportunity guidelines, and data analysis of related issues. Section 19793 requires the SPB to annually report to the Governor, the Legislature, and the Department of Finance on each agency's accomplishments in meeting their stated affirmative action goals for the prior fiscal year. That report must include information on laws that discriminate or have the effect of discrimination on the basis of race, color, religion, national origin, political affiliation, or marital status.

Proposition 209, approved by the voters on November 5, 1996, added Section 31 to Article I of the California Constitution. This section provides that the state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.

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Proposed Law

This bill would amend Sections 18900, 18930, 19790, 19792, and 19793 of the Government Code. Section 18900 would state that it is the state's policy that examination and employment information be broadly disseminated to all California workforce sectors and require the State Personnel Board to develop a system requiring state agencies to disseminate state recruitment, examination, and employment information.

Section 18930 would require that examinations utilize established professional standards and procedures in order to ensure the predictive accuracy of the selection instruments used.

Section 19790 would require that each agency take all steps necessary to ensure that selection practices are fair, objective, based on merit, and free from unlawful discrimination. The SPB would be responsible for providing statewide advocacy, coordination, enforcement, and monitoring of those programs.

Section 19792 would require each state agency to gather, review, and report to SPB hiring data on all state civil service examinations.

Section 19793 would require SPB to annually report to the Governor, the Legislature, and the Department of Finance the following information, based upon information provided by agencies and departments:

- (1) The representation of minorities, women, and persons with disabilities, by organizational level within each state agency and department;
- (2) The occupational groups within each agency or department having statistically significant underutilization problems with respect to minorities, women, and persons with disabilities, the size of the deficiencies, and the annual employment goals established; and
- (3) The progress of each state agency and department in meeting its stated employment goals for the past fiscal year.

In addition to the information required under current law, the report would also be required to include information on laws that discriminate or have the effect of discrimination on the basis of ancestry, physical disability, mental disability, medical condition, or sexual orientation.

Background

In analyzing the scope of Proposition 209 in terms of the appropriateness of the ballot label's use of the phrase "affirmative action," the court cited various definitions of the term affirmative action that further indicated that it includes many programs not covered by Proposition 209, including "the encouragement of increased representation of women and minority-group members" (*Lungren v. Superior Court of Sacramento* (1996) 48 Cal Spp.4th 435, 442.) A 1997 Legislative Counsel opinion determined that "outreach efforts by themselves do not involve 'preferences,' since after obtaining the broader pool, the employer may make its selection in a race- and sex-blind fashion." The opinion further stated that "The prohibition in Section 31. . . against preferential treatment refers to programs that confer a benefit to persons within a specific class

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based on race, sex, color, ethnicity, or national origin to the exclusion of persons who are not within that class, but would not include an outreach program designed to provide information or otherwise increase the diversity of the pool of applicants for such a benefit.”

Legislation similar to this bill, Senate Bill 44 (Polanco) from the 1999-2000 Legislative Session, was vetoed. Governor Davis’ veto message advocated diversity in the public workforce, and stated that “outreach programs can be fashioned that are constitutionally permissible, based on socio-economic status, geographic area or other non-race-based characteristics.” The message further stated the Governor’s intent to appoint a Task Force on Diversity and Outreach to examine ways in which state government may fashion and conduct outreach programs that are constitutionally permissible. Senator Polanco and Assembly Member Kuehl, along with state agency, business, academic, and community leaders, make up the task force membership.

The Governor’s Task Force on Diversity and Outreach recommended, among other things, that the state pursue five key areas in recruiting, hiring, maintaining, and promoting a diverse workforce:

- Funding for outreach programs and hiring/promotional practices
- Comprehensive outreach and recruitment efforts
- Collection and monitoring of data on diversity and discrimination
- Selection decisions (test validation)
- Employee development programs

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author in an effort to implement some of the suggestions contained in the Task Force on Diversity and Outreach report. According to the author’s office, the stated purpose of the bill is to ensure that state agencies take all measures to protect against discrimination in their recruitment, examination and employment processes and procedures.
2. **The Board of Equalization is currently involved in recruitment and diversity efforts.** Those efforts include: (1) Campus recruitment and outreach activities; (2) Recruitment advertising; (3) Proposed enhancements to recruitment outreach efforts; (4) Statistical representation of manager and supervisor positions; (5) The Equal Employment Opportunity Officer’s duties and responsibilities.
3. **Current Recruitment Activities.** Over the past 18 months, the Board’s Examination and Recruitment Section (ERS) has participated in 296 on-campus and 20 off-campus events, career fairs and conferences, and established ongoing liaisons with 59 organizations. On a semi-annual basis, the 22 program staff involved in recruitment and outreach meet with personnel staff to review and discuss recruitment issues and outreach opportunities. The ERS also coordinates the advertising of examination and career opportunities available throughout the Board.

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4. **Exam participation statistics indicate increases in minority involvement.** The Board maintains statistics on the gender, ethnic, and disabled representation of candidates who have participated in a sample of civil service examinations for Board classifications. Those statistics indicate an increase in the participation of individuals of Asian, Black, and Hispanic origin in the Board's Business Taxes Administrator series and Supervising Tax Auditor series, and an increase in the participation of individuals of Black, Filipino, and Hispanic origin in the Business Taxes Compliance Supervisor series.
5. **Proposed Enhancements to the Board's Recruitment and Outreach efforts.** During the next year, the Board intends to (1) expand the list of college campuses used for recruitment to include community colleges and colleges/universities with good minority representation in the accounting, auditing, legal, and technology emphases, (2) expand the list of recruitment and outreach organizations to include the minority bar associations, (3) elevate responsibility for recruitment and outreach activities by appointing a Recruitment and Outreach Manager to work on improving the Board's recruitment and outreach efforts, and (4) develop an agencywide Recruitment Program Plan that identifies activities and timelines to improve recruitment and outreach that facilitate a more representative workforce.
6. **Related legislation.** This bill is related to SB 1045 (Polanco), which would declare the intent of the Legislature to reaffirm diversity as a public policy goal in employment and contracting, and authorize agencies, in contracting for and procuring goods and services, to engage in recruitment and outreach programs to increase diversity. That bill would also require each agency awarding a contract or procuring goods or services to collect information and report annually to the Governor and the Legislature on the participation level of minority, women, and disabled veteran-owned businesses.

COST ESTIMATE

This bill would enhance recruitment, examination, and employment efforts in State service. The Board is already engaged in many of the activities addressed in this bill. The associated implementation requirements that would be issued by the State Personnel Board are unknown, however, the cost impact of this bill is expected to be absorbable.

REVENUE ESTIMATE

This bill would not impact the state's revenues.

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